

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL ACTION NO. 3:10-CV-355-RJC-DCK**

<b>RICHARD A. CAPELL,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b><u>MEMORANDUM AND</u></b>
	)	<b><u>RECOMMENDATION</u></b>
	)	
<b>NC DIVISION OF VOCATIONAL</b>	)	
<b>REHABILITATION SERVICES, PAMELA</b>	)	
<b>LLOYDE-OGOKE, M. TERRY HODGES,</b>	)	
<b>CHARLOTTE-MECKLENBURG HOSPITAL</b>	)	
<b>AUTHORITY d/b/a CAROLINAS MEDICAL</b>	)	
<b>CENTER, CINDY BOBAY and</b>	)	
<b>KEITH A SMITH,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

**THIS MATTER IS BEFORE THE COURT** on “Defendants Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center, Cindy Bobay and Keith A. Smith’s Motion To Dismiss” (Document No. 15) filed October 4, 2010, and Defendant “NC Department Of Health And Human Services’ Motion To Dismiss” (Document No. 25) filed October 25, 2010. On or about November 24, 2010, *pro se* Plaintiff Richard A. Capell (“Plaintiff”) filed an “Amended Complaint #3” (Document No. 31), following the Court’s previous Orders (Document Nos. 27 and 30) allowing the Plaintiff to submit a proposed third superseding Complaint.

This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and immediate review is appropriate. Having fully considered the record, the motions, and applicable authority, the undersigned will respectfully recommend that these motions to dismiss be denied as moot.

It is well settled that a timely-filed amended pleading supersedes the original pleading, and

that motions directed at superseded pleadings may be denied as moot. Young v. City of Mount Ranier, 238 F. 3d 567, 573 (4th Cir. 2001)(“The general rule .... is that an amended pleading supersedes the original pleading, rendering the original pleading of no effect); Colin v. Marconi Commerce Systems Employees' Retirement Plan, 335 F.Supp.2d 590, 614 (M.D.N.C. 2004) (“Earlier motions made by Defendants were filed prior to and have been rendered moot by Plaintiffs' filing of the Second Amended Complaint); Turner v. Kight, 192 F.Supp. 2d 391, 397 (D.Md. 2002) (denying as moot motions to dismiss original complaint on grounds that amended complaint superseded original complaint).

The undersigned notes that Plaintiff failed to file a proper motion to amend, but the Court will nonetheless recommend that “Amended Complaint #3” be accepted as Plaintiff’s current and final Complaint in this matter. Based on the foregoing, Plaintiff’s “Amended Complaint #3” (Document No. 31) supersedes both the original “Complaint” (Document No. 1) and the first “Amended Complaint” (Document No. 10); and the pending motions to dismiss are rendered moot by the “Amended Complaint #3”.

**IT IS, THEREFORE, RECOMMENDED** that “Defendants Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center, Cindy Bobay and Keith A. Smith’s Motion To Dismiss” (Document No. 15) and Defendant “NC Department Of Health And Human Services’ Motion To Dismiss” (Document No. 25) be **DENIED AS MOOT**, without prejudice to refile motions to dismiss “Amended Complaint #3” (Document No. 31).

#### **NOTICE OF APPEAL RIGHTS**

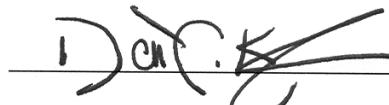
The parties are hereby advised that pursuant to 28 U.S.C. § 636(b)(1)(C), and Rule 72 of the Federal Rules of Civil Procedure, written objections to the proposed findings of fact, conclusions of law, and recommendation contained herein may be filed within fourteen (14) days of service of

same. Responses to objections may be filed within fourteen (14) days after service of the objections. Fed.R.Civ.P. 72(b)(2). Failure to file objections to this Memorandum and Recommendation with the District Court constitutes a waiver of the right to *de novo* review by the District Court. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005). Moreover, failure to file timely objections will preclude the parties from raising such objections on appeal. Diamond, 416 F.3d at 316; Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003); Snyder v. Ridenhour, 889 F.2d 1363, 1365 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 147-48 (1985), reh'g denied, 474 U.S. 1111 (1986).

The Clerk is directed to send copies of this Memorandum and Recommendation to the *pro se* Plaintiff, counsel for Defendants, and the Honorable Robert J. Conrad, Jr.

**IT IS SO RECOMMENDED.**

Signed: December 1, 2010

  
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David C. Keesler  
United States Magistrate Judge 